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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/787,506

02/26/2004

Darwin J. Prockop

57616-5001-03

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04/30/2008

DRINKER BIDDLE & REATH  
ATTN: INTELLECTUAL PROPERTY GROUP  
ONE LOGAN SQUARE  
18TH AND CHERRY STREETS  
PHILADELPHIA, PA 19103-6996

EXAMINER

SAJJADI, FEREDYDOUN GHOTB

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***ADVISORY ACTION***

Continuation of 11. does not place the application in condition for allowance because:

The Examiner maintains the rejection of claims 55-62 and 78-85 under 35 USC §112, first paragraph (lack of enablement), for reasons of record. Applicants' cancellation of claims 63-77 renders their rejection moot.

Applicants have requested the finality of the previous office action dated February 4, 2008 be withdrawn, as the Examiner and Applicants have not developed a clear issue in relation to the subject matter of claims 78-85, encompassing methods of generating a cell of a blood vessel, that received no substantive examination on the merits.

Applicants' arguments have been fully considered, but are not found persuasive, because claims 78-85 did in fact receive substantive examination, and were clearly identified as being rejected under 112, first paragraph, in the previous office action. Claim 78, as originally presented, is drawn to a method for generating a cell of a blood vessel in a mammal, the method comprising administering culture expanded autologous or allogeneic bone marrow stromal cells to said mammal, wherein said cells differentiated into cells of a blood vessel in said mammal. The method of claim 78 employs the same method step of administering culture expanded autologous or allogeneic bone marrow stromal cells to a mammal, as that of base claim 55. The language of claim 78 reads on a method of generating any cell of a blood vessel. Thus, claims 55 and 78 encompass the same scope with regard to issues forming the basis for rejection of base claim 55.

With regards to the amendment of the preamble of base claim 55 to recite a method for generating a cell of a blood vessel...thereby generating a blood vessel; the issues previously made of record continue to apply equally to the amended claim; and include an absence of an enabling disclosure for generating the cells of blood vessel (that comprise epithelial cells, endothelial cells, connective tissue, intercellular matrix, vascular smooth muscle and nerves that supply the muscular layer), such as major veins and arteries in a mammal. Additional issues include the proper differentiation and generation of repair of blood vessels at the site where said vessels are required, and not at undesired sites, following systemic administration of a mixed, partially enriched population of stromal cells.

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Applicants appear to be arguing that “a method for generating a cell of a blood vessel” in claim 55 requires a separate examination than the language originally presented. Such is not found persuasive, because base claim 55 additionally recites: “wherein said cells differentiate into cells of a blood vessel in said mammal, thereby generating a blood vessel”. Thus, the product resulting from the mixed stromal cells is the same, i.e. a blood vessel. If the claim was to be interpreted based solely on the preamble, as "a method for generating a single type of cell of a blood vessel", such as an endothelial cell, such method would be rejected on the same grounds of record, that a single cell type is not sufficient to form a vein or artery. It should be further noted that generating a single type of cell of a blood vessel is not equivalent to generating a vein or an artery, and thus is does not bear a reasonable correlation to the entire scope of the claim.

Applicants' arguments with respect to the teachings of the various cited references of record, have been previously addressed.

The rejection of claims 55-62 and 78-85 under the judicially created doctrine of obviousness double patenting, over claims 55-70 of Application No: 10/423,232 is maintained for reasons of record. Applicants state that the '232 Application has been abandoned. However, a notice of abandonment has not been made of record.

The rejection of claims 55-62 and 78-85 under the judicially created doctrine of obviousness double patenting, over claims 17-28 of co-pending Application No: 10/844,235 is maintained for reasons of record, as the rejection is not the only rejection remaining in the instant Application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FEREYDOUN G. SAJJADI whose telephone number is (571)272-3311. The examiner can normally be reached on 6:30 AM-3:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fereydoun G. Sajjadi, Ph.D.  
Examiner, Art Unit 1633

/Anne Marie S. Wehbe/  
Primary Examiner, Art Unit 1633